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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

ROXANA YANNETH PUENTES  
420 Ferrara Court, Apt. 110  
Pomona, CA 91766

Case No. 6679

Vocational Nurse License No.  
VN 215966

Respondent

DECISION DENYING PETITION FOR RECONSIDERATION

The Board of Vocational Nursing and Psychiatric Technicians hereby denies your Petition for Reconsideration of its February 1, 2009 Decision in the above-entitled matter.

This Decision shall become effective on February 11, 2009.

IT IS SO ORDERED this 2<sup>nd</sup> day of February, 2009.

  
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John P. Vertido, L.V.N.  
President

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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

ROXANA YANNETH PUENTES  
420 Ferrara Court, Apt. 110  
Pomona, CA 91766

Case No. 6679

Vocational Nurse License No.  
VN 215966

Respondent.

**ORDER DELAYING DECISION**

Pursuant to Section 11521(a) of the Government Code, the Board of Vocational Nursing and Psychiatric Technicians (Board) hereby issues this Order Delaying Decision in the above-stated case until February 11, 2009. The purpose of the delay is to permit the Board to review your Petition for Reconsideration.

IT IS SO ORDERED this 15<sup>TH</sup> day of January, 2009.

  
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John P. Vertido, L.V.N.  
President

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**BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation  
Filed Against:

Case No.: 6679

**ROXANA YANNETH PUENTES**  
420 Ferrara Court, Apt. 110  
Pomona, CA 91766

**DEFAULT DECISION  
AND ORDER**

Vocational Nurse License No. VN 215966

Respondent.

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Roxana Yanneth Puentes ("Respondent") was served Petition to Revoke Probation No. 6679; Statement to Respondent; Notice of Defense form; copies of Government Code sections 11507.5, 11507.6 and 11507.7; and Request for Discovery by both first class and certified mail on August 27, 2008 at her address of record as provided in sections 11503. and 11505 of the Government Code of the State of California.

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Respondent failed to file a Notice of Defense within the time specified in Government Code section 11506.

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The Bureau of Vocational Nursing and Psychiatric Technicians ("Bureau") has determined that Respondent has waived her rights to a hearing to contest the merits of the Petition to Revoke Probation and that the Bureau will take action on Petition to Revoke Probation without a hearing, pursuant to Government Code section 11520.

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The Bureau makes the following findings of fact:

**FINDINGS OF FACT**

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1. Teresa Bello-Jones, J.D., M.S.N., R.N., made and filed the Petition to Revoke Probation solely in her capacity as the Bureau's Executive Officer.

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2. On August 1, 2005, the Bureau issued Vocational Nurse License Number VN 215966 to Respondent. Said license expired on January 31, 2007 and has not been renewed.

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3. Pursuant to Business and Professions Code sections 101.1(b) and 150, the Department of Consumer Affairs has succeeded to and is vested with all duties, powers, purposes,

1 responsibilities and jurisdiction not otherwise repealed or made inoperative of the Bureau and its  
2 executive officer; that the department is under the control of the Director of Consumer Affairs.

3 4. Pursuant to Business and Professions Code section 2875, the Bureau may  
4 discipline any licensed vocational nurse for any reason provided in Article 3 of the Vocational  
5 Nursing Practice Act.

6 5. Pursuant to Business and Professions Code section 118(b), the expiration of a  
7 license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary action during the  
8 period within which the license may be renewed, restored, reissued, or reinstated. Under Business  
9 and Professions Code section 2892.1, the Bureau may renew an expired license at any time within  
10 four years after the expiration.

11 6. Respondent has subjected her probation to revocation in that Respondent  
12 failed to comply with the terms and conditions of the Probation Program established by the Bureau.  
13 Respondent failed to comply with probation terms #2, #7, #9, #10, #12, and #15, as described in  
14 Petition to Revoke Probation No. 6679, a copy of which is attached as Exhibit "1" and incorporated  
15 by reference.

#### 16 DETERMINATION OF ISSUES

17 Based on the foregoing Findings of Fact, Respondent has subjected her probation to  
18 revocation for failure to comply with the terms and conditions of the Probation Program established  
19 by the Bureau.

#### 20 LOCATION OF RECORD

21 The record on which this Default Decision is based is located at the Sacramento  
22 office of the Bureau of Vocational Nursing and Psychiatric Technicians.

#### 23 ORDER

24 **WHEREFORE**, the Bureau of Vocational Nursing and Psychiatric Technicians  
25 makes the following order:

26 Vocational Nurse License Number VN 215966 authorizing Respondent to act as a  
27 vocational nurse is hereby revoked.

28 Respondent shall have the right to petition for reinstatement of the aforesaid license

1 pursuant to the provision of section 2878.7(a)(1) of the Business and Professions Code.

2 Respondent shall not be deprived of making any further showing by way of  
3 mitigation; however, such showing must be made directly to the Bureau of Vocational Nursing and  
4 Psychiatric Technicians, 2535 Capitol Oaks Drive, Suite 205, Sacramento, California, 95833 prior to  
5 the effective date of this Decision.

6 This Default Decision shall become effective on February 1, 2009.

7 Dated and signed December 12, 2008.

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11 PATRICIA HARRIS  
12 Deputy Director, Board/Bureau Support  
13 Department of Consumer Affairs  
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27 Attachments: Exhibit "1", Petition to Revoke Probation No. 6679 and Declaration of Service  
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Exhibit "1"  
Petition to Revoke Probation No. 6679 and Declaration of Service

**FILED**

AUG 27 2005

**Board of Vocational Nursing  
and Psychiatric Technicians**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 SHERRY L. LEDAKIS, State Bar No. 131767  
Supervising Deputy Attorney General  
4 110 West "A" Street, Suite 1100  
San Diego, CA 92101

5 P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2078  
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9 **BEFORE THE**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Petition to Revoke Probation  
Against:

Case No. 6679

14 **ROXANA YANNETH PUENTES, AKA**  
15 **ROXANA PUENTES**  
24493 Bostwick Drive  
Moreno Valley, California 92552

**PETITION TO REVOKE  
PROBATION**

16 Vocational Nurse License Number VN 215966

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this  
22 Petition to Revoke Probation solely in her official capacity as the Executive Officer of the  
23 Bureau of Vocational Nursing and Psychiatric Technicians ("Bureau"), Department of Consumer  
24 Affairs.

25 **Vocational Nurse License**

26 2. On or about August 1, 2005, the Bureau's predecessor, the Board of  
27 Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN

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1 215966 to Roxana Yanneth Puentes, also known as Roxana Puentes ("Respondent"). The license  
2 expired on January 31, 2007.

3 **Prior Discipline**

4 3. Effective July 22, 2005, pursuant to the Decision and Order in Statement  
5 of Issues No. 6679, the Bureau's predecessor, the Board of Vocational Nursing and Psychiatric  
6 Technicians, approved the issuance of a vocational nurse license to Respondent which was  
7 immediately revoked and the revocation stayed. Respondent was placed on probation for a  
8 period of three years with certain terms and conditions. A copy of that decision is attached as  
9 Exhibit A and is hereby incorporated by reference.

10 **JURISDICTION**

11 4. Business and Professions Code section 101.1(b) states:

12 .....

13 (b) (1) In the event that any board, as defined in Section 477, becomes  
14 inoperative or is repealed in accordance with the act that added this section, or by  
15 subsequent acts, the Department of Consumer Affairs shall succeed to and is  
16 vested with all the duties, powers, purposes, responsibilities and jurisdiction not  
17 otherwise repealed or made inoperative of that board and its executive officer.

18 5. Code section 2875 provides, in pertinent part, that the Board may  
19 discipline the holder of a vocational nurse license for any reason provided in Article 3  
20 (commencing with Code section 2875) of the Vocational Nursing Practice Act.

21 6. Code section 118, subdivision (b), states:

22 The suspension, expiration, or forfeiture by operation of law of a license  
23 issued by a Board in the department, or its suspension, forfeiture, or cancellation  
24 by order of the Board or by order of a court of law, or its surrender without the  
25 written consent of the Board, shall not, during any period in which it may be  
26 renewed, restored, reissued, or reinstated, deprive the Board of its authority to  
27 institute or continue a disciplinary proceeding against the licensee upon any  
28 ground provided by law or to enter an order suspending or revoking the license or  
otherwise taking disciplinary action against the licensee on any such ground.

29 7. Condition 11 of the disciplinary order in Case No. 6679 states, in pertinent  
30 part:

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1                   11.    **Violation of Probation.**

2                   If Respondent violates the condition of her probation, the Board after  
3                   giving Respondent notice and an opportunity to be heard, may set aside the stay  
4                   order and impose the stayed discipline (revocation) of the Respondent's license.  
5                   If during the period of probation, an accusation or petition to revoke probation has  
6                   been filed against the Respondent's license or the Attorney General's Office has  
7                   been requested to prepare an accusation or petition to revoke probation against the  
8                   Respondent's license, the probationary period shall automatically be extended and  
9                   shall not expire until the Accusation or Petition has been acted upon by the Board.

10                   8.       Respondent has violated the disciplinary order, as set forth in the  
11                   following paragraphs:

12   **FIRST CAUSE TO REVOKE PROBATION**

13                   (Failure to Submit Reports and Failure to Comply with Probation Program)

14                   9.       At all times after the effective date of Respondent's probation, Condition 2  
15                   stated:

16   **2.       Compliance With Probation Program and Quarterly Report  
17   Requirements.**

18                   Respondent shall fully comply with terms and conditions of the probation  
19                   established by the Board and shall cooperate with the representatives of the Board  
20                   in its monitoring and investigation of the Respondent's compliance with the  
21                   Probation Program.

22                   Respondent shall submit quarterly reports, under penalty of perjury, in a  
23                   form required by the Board. The reports shall certify and document compliance  
24                   with all the conditions of probation.

25                   10.     Respondent's probation is subject to revocation because she failed to  
26                   comply with Probation Condition 2, referenced above. The facts and circumstances regarding  
27                   this violation are as follows:

28                   a.       Respondent failed to provide the Bureau with Quarterly Written Reports  
29                   for the periods July 2005 through September 2005, October 2005 through December 2005,  
30                   January 2006 through March 2006, April 2006 through June 2006, July 2006 through September  
31                   2006, October 2006 through December 2006, January 2007 through March 2007, April 2007  
32                   through June 2007, July 2007 through September 2007, and October 2007 through December  
33                   2007.

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1                   **10. Maintenance of Valid License.**

2                   Respondent shall, at all times while on probation, maintain an active  
3                   current license with the Board, including any period during which suspension or  
4                   probation is tolled.

5                   16. Respondent's probation is subject to revocation because she failed to  
6                   comply with Probation Condition 10, referenced above, by allowing Vocational Nurse License  
7                   Number VN 215966 to expire on January 31, 2007.

8                   **FIFTH CAUSE TO REVOKE PROBATION**

9                   (Failure to Attend Chemical Dependency Support/Recovery Group)

10                  17. At all times after the effective date of Respondent's probation, Condition  
11                  12 stated, in pertinent part:

12                  **12. Chemical Dependency Support/Recovery Groups.**

13                  Within five (5) days of the effective date of the Decision, Respondent shall  
14                  begin attendance at a chemical dependency support group. . . . Verified  
15                  documentation of attendance shall be submitted by the Respondent with each  
16                  quarterly report.

17                  18. Respondent's probation is subject to revocation because she failed to  
18                  comply with Probation Condition 12, referenced above, in that Respondent failed to provide the  
19                  Bureau with documentation of her attendance at a chemical dependency support group for the  
20                  periods July 2005 through September 2005, October 2005 through December 2005, January 2006  
21                  through March 2006, April 2006 through June 2006, July 2006 through September 2006, October  
22                  2006 through December 2006, January 2007 through March 2007, April 2007 through June  
23                  2007, July 2007 through September 2007, and October 2007 through December 2007.

24                  **SIXTH CAUSE TO REVOKE PROBATION**

25                  (Failure to Submit to Biological Fluid Testing)

26                  19. At all times after the effective date of Respondent's probation, Condition  
27                  15 stated, in pertinent part:

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**Exhibit A**

**Decision and Order**

**Bureau of Vocational Nursing and Psychiatric Technicians Case No. 6679**

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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

Case No. 6679

ROXANA PUENTES  
24493 Bostwick Drive  
Moreno Valley, CA 92553

OAH No. L2004120498

Vocational Nurse Applicant

Respondent.

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DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on July 22, 2005.

IT IS SO ORDERED this 22<sup>nd</sup> day of June, 2004.

*Sister Marie de Porres Taylor*  
Sister Marie de Porres Taylor  
President



BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

ROXANA PUENTES  
24493 Bostwick Drive  
Moreno Valley, CA 92553

Vocational Nurse Applicant

Respondent.

Case No. 6679

OAH No. L2004120498

**PROPOSED DECISION**

On March 4, 2005, in Riverside, California, Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Kevin Geoghegan, Senior Legal Analyst, California Department of Justice, represented the complainant Board of Vocational Nursing and Psychiatric Technicians (hereafter Board).

Respondent Roxana Puentes was present and represented herself.

Evidence was received, closing arguments were made and the record was held open to supply the complainant with mitigatory documents filed by respondent at the hearing. This was accomplished on March 21, 2005 and the record was then closed and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. The Statement of Issues was filed by Teresa Bello-Jones, J.D., M.S.N., R.N., in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California.

2. On or about December 17, 2002, the Board of Vocational Nursing and Psychiatric Technicians received an application for a Vocational Nurse License from Roxana Puentes. The application was certified under penalty of perjury and was signed by respondent on October 7, 2002. On March 1, 2004, the Board denied respondent's application. The application was denied because respondent has a criminal history that is significant and placed in question her judgment should she be licensed in this sensitive health care position. The sole issue in this case is whether respondent has demonstrated sufficient efforts and progress in her rehabilitation to justify a probationary license. On balance, this is a close case. For the reasons articulated below, respondent has demonstrated sufficient rehabilitation to warrant the issuance of a probationary license. The probationary conditions are important both for the public who may be exposed to her care-giving but also to respondent. She must realize that her efforts at rehabilitation are not yet complete and she must continue to exhibit sound and reliable decision-making during the time she will be on probation. She has earned the right to call herself a licensed vocational nurse. She has not yet earned this right free and clear.

3. Respondent has suffered three criminal convictions that are pertinent to the issues in this case. They are as follows:

A. On or about January 9, 2001, in the Riverside County Superior Court, respondent was convicted by her plea of guilty of violating California Vehicle Code section 23152 (b)-Driving Under the Influence With a Blood Alcohol exceeding 0.8, a misdemeanor. The conviction was based on her driving while impaired on November 30, 2000. As a result of the conviction, imposition of sentence was suspended and she was placed on probation subject to standard terms. These included 36 months summary probation, six days in custody, a \$1,154.00 fine, a restitution fine of \$100.00, that respondent attend and complete a first offender DUI program, and a license restriction of 90 days.

B. On or about December 12, 2001, in the San Bernardino County Superior Court, respondent was convicted by her plea of guilty to violating California Vehicle Code sections 22349-Maximum Speed Limit, 14601.2, subdivision (a)-Driving With a Revoked or Suspended License, 16028, subdivision (a)-No proof of Financial Responsibility, and 4000, subdivision (a)-No Valid Registration. The conviction was based on her driving on October 11, 2001. As a result of the conviction, imposition of sentence was suspended and she was placed on probation subject to terms and conditions that included 36 months summary probation, 30 days in county jail, a \$1,600.00 fine and restitution fine of \$100.00.

C. On July 9, 2002, in the Riverside County Superior Court, respondent was convicted by her plea of guilty to violating California Vehicle Code sections 23152, subdivision (b)-Driving under the influence with a Blood Alcohol exceeding 0.8, and 14601.2, subdivision (a)-Driving with a Revoked or Suspended License. The conviction was based on her driving on April 14, 2001. As a result of her conviction, imposition of sentence was suspended and she was placed on probation subject to terms and conditions which

included summary probation for 48 months, 30 days in county jail, a \$1,350.00 fine, attend and complete Drinking Driver Program SB-38, and suffer a license restriction for 90 days.

4. The actions that form the basis for the three criminal convictions set forth above all occurred during an eleven-month period in late 2000 and 2001. They occurred at a time of great stress in respondent's life. She was going to school to be an LVN full-time, helping to raise her young son and dealing with the death of her mother. She readily admits that she made some bad choices and that she is responsible for the mess she has created. At the present time, in March 2005 she has completed all requirements of her criminal sentences except one. She, at least according to the written record before the administrative law judge, remains on probation for her second DUI conviction until July 2006. She believes that she is no longer on probation. Her belief appears sincere but the only documentary evidence in the record shows her placed on 48 months of summary probation on July 9, 2002.

5. Respondent has successfully completed all the discrete performance requirements of her various probations. This includes large fines, license restrictions, and attendance at a first time DUI program and then the far more rigorous year-long SB 38 program. Her performance in the early part of her probationary period was rocky. She had probation violations which cost her more money and some additional time in custody. Her performance in the last three years has been more and more consistent and appropriate.

6. Respondent is sober now. She stopped drinking in January 2004. She attends AA meetings on an infrequent basis. She does not consider herself an alcoholic but feels that attending AA keeps her grounded and focused on staying out of trouble. She is now living with a man who has had problems with alcohol in the past. According to respondent, her partner's problems are a thing of the past and he regularly attends AA and is working the 12 Step program.

7. Respondent is 28 years old and currently works as the office manager of a local Inland Empire branch of H and R Block. She has worked in health care in the past at San Dimas Community Hospital. She loves health care and dreams, some day, of going on in her schooling and getting her R.N.

8. The Office of Administrative Hearings conducts hearings such as this involving sensitive licensing issues where public welfare is at stake for over 100 state and local government agencies. Many of these cases involve issues of substance abuse. Alcohol and drugs are an ever-present problem that places the public at risk of harm from the foolishness and extreme lack of judgment exhibited by substance abusers. Nevertheless, people who have had serious substance abuse problems in the past are not automatically disqualified in perpetuity from having a state-issued license, even if vulnerable populations of the public are involved. Each case must be evaluated individually and judged against a background of a body of expertise developed hearing similar types of cases. California Government Code section 11425.50, subdivision (c) contemplates this when it states:

"The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence."

The findings herein and the Order entered are made against a backdrop of the ever-present problem of substance abuse, its treatment and what distinguishes those who successfully overcome these demons and those who don't.

9. Respondent does not dispute the criminal convictions. She does, however, seem to lack some understanding of why she suffered DUI conviction #2. She was a passenger when the car broke down and the driver, her ex-husband, left to get help. She was in the car when the police arrived and under applicable appellate law, she was deemed in control of the vehicle. The convictions are serious and substantial in that they demonstrate a serious disregard for the welfare of self and others. These convictions are red flags for the particular licensed activity here. Vocational nurses take care of the ill and the needy and this is a particularly vulnerable population. This needy and vulnerable population is entitled to expect that their care givers will act in a dependable and safe fashion. Good judgment is required of an LVN at all times.

Respondent remains on criminal probation for her last conviction. This probation will expire, assuming successful completion, on July 9, 2006.

10. Respondent appears to be finally turning her life around. Her decision making is no longer flawed and she does not seem to be shooting herself in the foot any more. She remains a work in progress and it is hoped she will see with increasing clarity that she alone is responsible for the results of the choices she has made.

11. The letters respondent has supplied in support of licensure paint a picture of a responsible and reliable person who has learned from her mistakes. She has made the most of her SB 38 experience and demonstrated insight rather than denial according to her counselor.

12. Currently respondent is employed full-time. She is divorced and helping to raise her ten-year-old son. She has auto insurance, current DMV registration, an unrestricted driver's license and is anxious and eager to begin her life as an LVN.

13. Rehabilitation is not an event but rather a process. The opportunity at a second chance has long and deep roots in our culture and our law. We do not insist that people wear the scarlet letter for a lifetime. But the opportunity at a second chance does not come automatically, simply earned with the passage of time. Rather, we all must earn our second chance. This is the core of the notion of rehabilitation. Society takes it as a given that we all make mistakes, some larger than others. When our mistakes are social mistakes, breaches of the criminal law, for example, society imposes certain disabilities on us. We are penalized for our conduct by incarceration, fines, probation, and community service.

Implicit in this set of disabilities imposed by society is a deeper truth. Society no longer trusts us completely. We have lost, at least temporarily, the trust of the community that we can do the tasks of citizenship without some oversight, some monitoring. Furthermore, depending on the social breach and depending on one's job, society may say that the breach is such that one can't be trusted to continue working in a particular area. The social breach is inconsistent with the particular type of work one is engaged in.

14. Rehabilitation is a process by which an individual earns back the trust of the community. It is composed of two very different modes of change. The first is attitudinal and involves the demonstration of a change of mind and heart. The second involves changes in behavior. To establish the change of mind and heart, one must come to terms with the underlying criminal behavior. One must demonstrate an awareness and understanding that it was wrong and that it was harmful. One must accept responsibility for the actions, not blaming it on others or excusing it. One must, in a word, show remorse. To establish a change in behavior, one must demonstrate a track record of consistently appropriate behavior over an extended period of time. In this way, society has the benefit of making a considered judgement with sufficient evidence.

15. There is no specific formula to establish rehabilitation. Each case must be evaluated on its own unique set of factors. Depending on what the stakes are, society may ask for a more compelling demonstration of rehabilitation from some than others. This is particularly so in these cases involving health care delivery services.

16. The California Board of Vocational Nursing and Psychiatric Technicians is charged with licensing and regulating a broad variety of endeavors all linked by one common thread. The populations that are taken care of by licensees are all uniquely vulnerable. They range from the infant to the elderly and include those who are infirm both physically and psychologically. Many are developmentally disabled and are uniquely at risk to be taken advantage of and harmed by the unscrupulous, the dishonest or the uncaring. Many of those cared for by licensees can't even speak the simple words necessary to ask for help. They can't even say that someone is hurting them. For this reason alone the Board must scrupulously evaluate all such claims involving licensure with an eye toward their paramount duty of public protection while at the same time acknowledging individual due process rights and the strong public policy in giving deserving people a second chance.

17. Respondent's course of conduct over the last five years runs the gamut from law breaking to law abiding. The good news for respondent is that her law breaking occurred approximately four years ago. In its wake she struggled to get back on the path toward responsible adulthood and finally succeeded.

18. Respondent has embarked on her rehabilitative journey. She appears to be working a program of sobriety that is honest and satisfactory. There are many cliches that riddle the field of addiction and substance abuse and these cliches get in the way of adequately and accurately describing human beings changing their choices and behavior due to their personal efforts and the intervention of others. Cliches convey pat answers and tidy

explanations for the complex, the uncertain and the unknowable. Respondent does not, at this time, appear to be an alcoholic. However, we do not have much to go on other than her word and the written statements from her SB 38 counselor. She testified that she no longer drinks. We have not much to go on about that other than her testimony and some weak inferences that can be drawn from her good choices over the last three years.

19. The issue here is not whether respondent has sustained criminal convictions. The convictions are not disputed nor does respondent deny that she is responsible for the situation she is in. The issue is what is the appropriate action to take consistent with the overriding goal of public protection. The Board has promulgated Disciplinary Guidelines that are meant to promote uniformity in disciplinary matters and are to be deviated from only with good reason. In the *Introduction* to the Guidelines the Board makes the following statement:

"The Board requests that matters in extenuation and mitigation, as well as those in aggravation, be fully considered and noted in the Proposed Decision. Of primary importance is the effect the respondent's conduct had or can have on the health, safety and welfare of California consumers."

The Disciplinary Guidelines enumerates a non inclusive list of matters to be considered in the Proposed Decision. In the *Factors To Be Considered* portion of the Guidelines the Board makes the following statement:

"In determining whether revocation, suspension or probation should be imposed in a given disciplinary action, the following factors should be considered:

- Nature and severity of the act(s), offenses, or crimes under consideration.
- Actual or potential harm to the public.
- Prior disciplinary record.
- Prior warnings on record or prior remediation.
- Number/and/or variety of current violations.
- Mitigation evidence.
- Rehabilitation evidence.
- In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- Overall criminal record.
- Time passed since the acts or offenses occurred.
- If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4."

20. Based upon the totality of the circumstances, respondent has established that she has done the things that are required to qualify for a probationary license. However, her sobriety is new. Her criminal misconduct is enough of a red flag to justify the probationary order below. This order is not meant to be punitive but rather to assure public protection.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 2866 provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of the Code.

2. Business and Professions Code section 2878 provides:

"The Board may suspend or revoke a license issued under this Chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code § 2840 et seq.)] for any of the following:

(a) Unprofessional conduct . . .

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction."

3. Business and Professions Code section 2878.5 provides:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof."

4. Business and Professions Code section 480 provides in relevant part that the Board may deny licensure if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

5. Cause exists to impose discipline on respondent for violation of Business and Professions Code section 2875 in that she has been guilty of unprofessional conduct and has

been convicted of crimes that are substantially related to the qualifications, functions, and duties of a licensed vocational nurse by virtue of Factual Findings 1-19.

6. Cause exists to impose discipline on respondent for violation of Business and Professions Code section 2878.5 in that she has been guilty of unprofessional conduct by using alcohol to an extent or in a manner dangerous or injurious to herself and to the extent that such use impaired her ability to conduct with safety to the public the practice authorized by her license by virtue of Factual Findings 1-19.

7. Cause exists to impose discipline on respondent for violation of Business and Professions Code section 480 in that she has been convicted of crimes that are substantially related to the qualifications, functions and duties of a licensed vocational nurse by virtue of Factual Findings 1-19.

8. All evidence of mitigation, extenuation and aggravation has been considered in applying the criteria set forth in the Board's Disciplinary Guidelines to the facts of this case.

#### ORDER

A Vocational Nurse License shall be issued to Respondent Roxana Puentes. Once issued, the license shall forthwith be revoked. However, the revocation is stayed, her license is placed on probation for a period of three years subject to the following terms and conditions.

1. **OBEY ALL LAWS.** Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Board within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by the respondent as part of his licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the decision.

2. **COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORT REQUIREMENTS.** Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.

3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGES.

Respondent shall notify the Board, in writing, within five (5) days of a change of residence or mailing address, of her new address and any change in her work or home telephone numbers.

4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE.

Respondent shall notify the Board, in writing, within five (5) days, if she leaves California to reside or practice in another state.

Respondent shall notify the Board, in writing, within five (5) days, upon her return to California.

The period of probation shall not run during the time Respondent is residing or practicing outside California.

5. NOTIFICATION TO EMPLOYER. When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify her employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. The Respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Professions includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if she is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

6. INTERVIEWS/MEETINGS WITH BOARD REPRESENTATIVES.

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board, or its designated representatives.

7. EMPLOYMENT REQUIREMENTS AND LIMITATIONS. During probation, the Respondent shall work in her licensed capacity in the State of California. This

practice shall consist of no less than six (6) continuous months and no less than twenty (20) hours per week.

While on probation Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site and shall not work in a float capacity except as approved, in writing, by the Board.

8. SUPERVISION REQUIREMENTS. Respondent shall obtain prior approval from the Board, before commencing any employment, regarding the level of supervision provided to the respondent while employed as a licensed vocational nurse or psychiatric technician.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the board.

9. COMPLETION OF EDUCATIONAL COURSES. Respondent, at her own expense, shall enroll and successfully complete a course substantially related to the violations, i.e., substance abuse, no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify the Respondent of the course content and number of hours required. Within thirty (30) days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study. The Board, in its sole discretion, shall have the authority to waive such condition if it is convinced that, on balance, respondent's efforts at rehabilitation demonstrate sufficient insight into her disease of addiction to make the taking of such a course unnecessary.

Upon successful completion of the course, Respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

10. MAINTENANCE OF VALID LICENSE. Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement respondent's license shall be subject to any and all terms of this probation not previously satisfied.

11. VIOLATION OF PROBATION. If the Respondent violates the condition of her probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the

Respondent's license. If, during the period of probation, an accusation or petition to revoke probation has been filed against the Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the Respondent's license will be fully restored.

12. CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS. Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by the Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation.

13. ABSTAIN FROM CONTROLLED SUBSTANCES. Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

14. ABSTAIN FROM USE OF ALCOHOL. Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

15. SUBMIT BIOLOGICAL FLUID SAMPLES. Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the Respondent's current employer.

16. TAKE AND PASS LICENSURE EXAMINATION. As a condition precedent to the lifting of the license suspension, respondent shall take and pass the licensure exam currently required of new applicants for the license possessed by respondent. Respondent shall pay the established examination fees.

All standard terms or any other terms of probation shall be tolled until the Respondent has successfully passed the licensure examination and notice of licensure has been mailed to the Respondent by the Board. The failure to pass the licensure examination within one year shall be considered a violation of her probationary status. The Board, in its sole discretion, may extend the period during which Respondent may take and pass the licensure examination to a maximum of two years but only if Respondent agrees in writing that her period of actual suspension continues until she takes and passes the licensure examination within the additionally allotted time.

DATED: March 24, 2005



\_\_\_\_\_  
STEPHEN E. HJELT  
Administrative Law Judge  
Office of Administrative Hearings

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8

9  
10 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12  
13 In the Matter of the Statement of Issues Against:

Case No. 6679

14 ROXANA PUENTES  
24493 Bostwick Drive  
Moreno Valley, CA 92553  
15 Vocational Nurse License

**STATEMENT OF ISSUES**

16 Respondent.  
17

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this  
22 Statement of Issues solely in her official capacity as the Executive Officer of the Board of  
23 Vocational Nursing and Psychiatric Technicians.

24 2. On or about December 17, 2002, The Board of Vocational Nursing and  
25 Psychiatric Technicians received an application for a Vocational Nurse License from Roxanna  
26 Puentes (Respondent). On or about October 7, 2002, ROXANA PUENTES certified under  
27 penalty of perjury to the truthfulness of all statements, answers, and representation in the  
28 application. The Board denied the application on March 1, 2004.



1           8.     Section 2878.5 of the Code states:

2           "In addition to other acts constituting unprofessional conduct within the meaning  
3 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person  
4 licensed under this chapter to do any of the following:

5           ". . .

6           "(b) Use any controlled substance as defined in Division 10 of the Health and  
7 Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of  
8 Chapter 9 of Division 2 of this code, or alcoholic beverages, to an extent or in a manner  
9 dangerous or injurious to himself or herself, any other person, or the public, or to the extent that  
10 such use impairs his or her ability to conduct with safety to the public the practice authorized by  
11 his or her license.

12           "(c) Be convicted of a criminal offense involving possession of any narcotic or  
13 dangerous drug, or the prescription, consumption, or self-administration of any of the substances  
14 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is  
15 conclusive evidence thereof.

16                                   FIRST CAUSE FOR DENIAL OF APPLICATION

17                                   (Criminal Conviction)

18           9.     Respondent's application is subject to denial under sections 480, 2878, and  
19 2878.5 of the Code in that on or about January 9, 2001, in a criminal proceeding entitled *The*  
20 *People of the State of California v. Roxana Puentes*, in Riverside County Superior Court Case  
21 Number RIM 403622, Respondent was convicted by plea of guilty of violating Vehicle Code  
22 section 23152(b) (Driving Under the Influence With a Blood Alcohol exceeding .8), a  
23 misdemeanor. The circumstances are as follows:

24           a.     On or about November 30, 2000, Respondent was arrested for  
25 alleged violations of Vehicle Code sections 23152(a) (Driving Under the Influence) and 23152(b)  
26 (Driving Under the influence With a Blood Alcohol exceeding .8).

27 ///

28 ///

1                   b.     On or about January 9, 2001, imposition of sentence was  
2 suspended under the following terms and conditions: 36 months summary probation, 6 days in  
3 county jail, \$1154.00 fine, \$100.00 restitution fine, attend and complete first offender DUI  
4 program, and license restricted for 3 months.

5                                   SECOND CAUSE FOR DENIAL OF APPLICATION

6   (Criminal Conviction)

7                   10.     Respondent's application is subject to denial under sections 480, and 2878  
8 of the Code in that on or about December 12, 2001, in a criminal proceeding entitled *The People*  
9 *of the State of California v. Roxana Puentes*, in San Bernardino County Superior Court Case  
10 Number: 40438QKRP, Respondent was convicted by plea of guilty of violating Vehicle Code  
11 sections 22349 (Maximum Speed Limit), 14601.2(a) (Driving with a Revoked or Suspended  
12 License), 16028(a) (No Proof of Financial Responsibility) and 4000(a) (No Valid Registration)  
13 as misdemeanors. The circumstances are as follows:

14                                   a.     On or about October 11, 2001, Respondent was arrested for alleged  
15 violations of Vehicle Code sections 22349 (Maximum Speed Limit), 14601.2(a) (Driving with a  
16 Revoked or Suspended License), 16028(a) (No Proof of Financial Responsibility) and 4000(a)  
17 (No Valid Registration).

18                                   b.     On or about December 12, 2001, imposition of sentence was  
19 suspended under the following terms and conditions: 36 months summary probation, 30 days in  
20 county jail, \$1600.00 fine, \$100.00 restitution, attend and license restricted for 3 months.

21                                   THIRD CAUSE FOR DENIAL OF APPLICATION

22   (Criminal Conviction)

23                   11.     Respondent's application is subject to denial under sections 480, 2878, and  
24 2878.5 of the Code in that on or about July 9, 2002, in a criminal proceeding entitled *The People*  
25 *of the State of California v. Roxana Puentes*, in Riverside County Superior Court Case Number  
26 RIM 407509, Respondent was convicted by plea of guilty of violating Vehicle Code sections  
27 23152(b) (Driving Under the Influence With a Blood Alcohol exceeding .8), and 14601.2(a)

28     ///

1 (Driving with a Revoked or Suspended License) as misdemeanors. The circumstances are as  
2 follows:

3 a. On or about April 14, 2001, Respondent was arrested for alleged  
4 violations of Vehicle Code sections 23152(a) (Driving Under the Influence) and 23152(b)  
5 (Driving Under the Influence With a Blood Alcohol exceeding .08), 14601.2(a) (Driving with  
6 Suspended or Revoked License), 16028(a) (No Proof of Financial Responsibility) and 40508(a)  
7 (Failure to Appear).

8 b. On or about July 9, 2002, imposition of sentence was suspended  
9 under the following terms and conditions: 48 months summary probation, 30 days in county jail,  
10 \$1350.00 fine, attend and complete Drinking Driver program (SB38), and license restricted for 3  
11 months.

12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters  
14 herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric  
15 Technicians issue a decision:

- 16 1. Denying the application of Roxana Puentes for a Vocational Nurse  
17 License;  
18 2. Taking such other and further action as deemed necessary and proper.

19 DATED: July 12, 2004

20  
21 

22 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
23 Executive Officer  
24 Board of Vocational Nursing and Psychiatric Technicians  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant  
28

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